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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0949-17T2

JOSEPH SIGNOR, individually  
and on behalf of others similarly  
situated,

Plaintiff-Respondent,

v.

GWC WARRANTY CORPORATION,

Defendant-Appellant.

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Argued May 8, 2018 – Decided May 17, 2018

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey,  
Law Division, Burlington County, Docket No.  
L-1100-17.

Kerri E. Chewning argued the cause for  
appellant (Archer & Greiner, PC, attorneys;  
Kerri E. Chewning and Kate A. Sherlock, on the  
briefs).

Lewis G. Adler argued the cause for respondent  
(Lewis G. Adler, Law Office of Paul DePetris,  
and Law Offices of Lee M. Perlman, attorneys;  
Lewis G. Adler, Paul DePetris, and Lee M.  
Perlman, on the brief).

PER CURIAM

Defendant GWC Warranty Corporation appeals from a September 15, 2017 order denying its motion to dismiss plaintiff's class action complaint and compel arbitration. We reverse.

We take the following facts from the record. In November 2015, plaintiff Joseph Signor purchased a used 2003 Ford F-250 Superduty truck from 123 Auto Sales, LLC, in Branchville. Plaintiff also purchased a powertrain plus service contract from defendant for \$916, covering the truck for 180 days or 7,500 miles.

The service contract application included the following warning above the customer signature: "IMPORTANT INFORMATION: Please refer to IMPORTANT DEFINITIONS section under TERMS & Conditions for defined Boldfaced terms." Section 16 of the "Terms & Conditions" of the contract contained the arbitration provision, which read: "ARBITRATION PROVISION: READ THE FOLLOWING ARBITRATION PROVISION ("Provision") CAREFULLY, IT LIMITS CERTAIN RIGHTS, INCLUDING YOUR RIGHT TO OBTAIN RELIEF OR DAMAGES THROUGH COURT ACTION." The provision states:

Any and all claims, disputes, or controversies of any nature whatsoever (whether in contract, tort, or otherwise, including statutory, common law, fraud (whether by misrepresentation or by omission) or other intentional tort, property or equitable claims) arising out of, relating to, or in connection with (1) this Contract and the purchase thereof; or (2) the validity[, ] scope, interpretation, and enforceability of

this Provision or the entire Agreement ("Claim"), shall be resolved by binding arbitration before a single arbitrator. All arbitrations shall be administered by the American Arbitration Association ("AAA") in accordance with its Expedited Procedures of the Commercial Arbitration Rules of the AAA in effect at the time the Claim is filed. The terms of this Provision shall control any inconsistency between the AAA's Rules and this Provision. . . . This Provision is part of a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. . . . This Provision shall inure to the benefit of and be binding on You and Us and this Provision shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Contract. You agree that any arbitration proceeding will only consider Your Claims. Claims by, or on behalf of, other individuals will not be arbitrated in any proceeding that is considering Your Claims. You and We understand and agree that because of this Provision neither You nor Us will have the right to go to court except as provided above and to have a jury trial or to participate as any member of a class of claimants to any Claim.

In addition, under the section of the contract entitled "Special State Disclosures/Requirements" the following language appears under New Jersey: "The following is added to section #16 ARBITRATION PROVISION: Under this provision, you waive your right to seek relief in a judicial forum."

Plaintiff filed a class action complaint in the Law Division, a demand for declaratory judgment relief, and a demand for a jury trial. Plaintiff alleged the contract violated the Truth in

Consumer Contract, Warranty and Notice Act (TCCWNA), N.J.S.A. 56:12-14 to -18, claimed the contract failed to make certain disclosures under the Service Contracts Act (SCA), N.J.S.A. 56:12-87 to -96, and thus violated the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -206, and the Uniform Commercial Code (UCC), N.J.S.A. 12A:1-101 to 12-26.

Defendant moved to dismiss plaintiff's complaint and compel arbitration pursuant to the arbitration provision contained in the service contract. Defendant argued the contracts contained a valid arbitration clause and plaintiff's complaint failed to plead viable TCCWNA or declaratory judgment claims.

The motion judge filed an order dismissing the count of plaintiff's complaint asserting a violation of the UCC, as agreed to by the parties. However, the judge denied defendant's motion to dismiss the remaining claims and compel arbitration. The judge found the arbitration clause was not a clear and unambiguous waiver of the right to bring a class action, and found there was no mutual assent to arbitration. The judge denied the motion to dismiss, finding "[p]laintiff . . . raised issues of fact regarding whether the TCCWNA is applicable to his claims[.]" This appeal followed.

#### I.

We begin by reciting our standard of review. The validity of an arbitration agreement is a question of law; therefore, our

review of an order denying a motion to compel arbitration is de novo. Barr v. Bishop Rosen & Co., Inc., 442 N.J. Super. 599, 605 (App. Div. 2015) (citing Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013)); see Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 445-46 (2014) ("Our review of a contract, generally, is de novo, and therefore we owe no special deference to the trial court's . . . interpretation. Our approach in construing an arbitration provision of a contract is governed by the same de novo standard of review." (citations omitted)).

Defendant argues the arbitration provision is valid and enforceable because it clearly instructs the only way for the parties to resolve all claims and disputes is through arbitration. Defendant also argues the arbitration provision language is straightforward, and clearly prohibits class action claims.

In order to determine whether arbitration should be compelled, we must first address whether the arbitration provision of a contract is valid and enforceable. Martindale v. Sandvik, Inc., 173 N.J. 76, 83, 92 (2002). Arbitration agreements should be read liberally and in favor of arbitration. Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2006) (quoting Marchak v. Claridge Commons, Inc., 134 N.J. 275, 282 (1993)).

Arbitration is fundamentally a matter of contract. NAACP of Camden Cty. E. v. Foulke Mgmt. Corp., 421 N.J. Super. 404, 424 (App. Div. 2011). However, "[a]rbitration's favored status does not mean that every arbitration clause, however phrased, will be enforceable." Atalese, 219 N.J. at 441. "An agreement to arbitrate 'must be the product of mutual assent, as determined under customary principles of contract law.'" Barr, 442 N.J. Super. at 605-06 (quoting Atalese, 219 N.J. at 442).

"Mutual assent requires that the parties understand the terms of their agreement[,]" and where the "agreement includes a waiver of a party's right to pursue a case in a judicial forum, 'clarity is required.'" Id. at 606 (quoting Moore v. Woman to Woman Obstetrics & Gynecology, L.L.C., 416 N.J. Super. 30, 37 (App. Div. 2010)). "[T]he waiver 'must be clearly and unmistakably established,' and 'should clearly state its purpose,' . . . [a]nd the parties must have full knowledge of the legal rights they intend to surrender." Ibid. (citations omitted). Therefore, an arbitration agreement should clearly state if it "depriv[es] a citizen of access to the courts . . . ." Garfinkel, 168 N.J. at 132.

Here, the arbitration provision stated "[a]ny and all claims, disputes, or controversies of any nature whatsoever . . . shall be resolved by binding arbitration before a single arbitrator."

In addition, the provision explains "[c]laims by, or on behalf of, other individuals will not be arbitrated in any proceeding that is considering your claims[,]" and "You and We understand and agree that because of this Provision neither You nor Us will have the right to go to court . . . to have a jury trial or to participate as any member of a class of claimants to any [c]laim."

The motion judge concluded the arbitration provision was not valid and enforceable because

the language does not seem unambiguous regarding class action claims . . . . Th[e] language seems to suggest that class actions are permitted but not in arbitration. Furthermore, the waiver of class actions is a part of the arbitration provision. It cannot be held to be a clear and unambiguous waiver of the rights to bring a class action.

We disagree.

A plain reading of the arbitration provision demonstrates it is clearly a waiver of the parties' right to pursue claims in court, either on an individual or a class action basis. We are satisfied the terms of the arbitration clause here are "stated with sufficient clarity and consistency to be reasonably understood by the consumer who is being charged with waiving [his or] her right to litigate a dispute in court." NAACP of Camden Cty. E., 421 N.J. Super. at 428.

The provision here is similar to the one in Curtis v. Cellco P'ship, 413 N.J. Super. 26 (App. Div. 2010). In Curtis, the first page of the agreement instructed the consumer to "[p]lease carefully read this Agreement[.]" Id. at 30. The agreement also included the following language: "INSTEAD OF SUING IN COURT, WE EACH AGREE TO SETTLE DISPUTES (EXCEPT CERTAIN SMALL CLAIMS) ONLY BY ARBITRATION." Id. at 31. The court held "[t]he [a]greement's arbitration clauses are 'clear and unambiguous' in their intent and purpose to inform the reader that all disputes must be presented in an arbitral forum, not a court." Id. at 38.

Here, similar language instructs the consumer to "refer to IMPORTANT DEFINITIONS section under TERMS & CONDITIONS[,]" and states all disputes and claims are to be settled in arbitration. Thus, when read in conjunction with the provision stating "[c]laims by, or on behalf of, other individuals will not be arbitrated in any proceeding that is considering your claims" it is evident class action claims cannot be asserted in any forum.

In declining to compel arbitration, the motion judge noted plaintiff's contention the provision was invalid because it was not found clearly on the first page, but "buried" on the eleventh page of the contract. The judge cited Noble v. Samsung Elecs. Am., Inc., no. 16-1903, 2017 U.S. App. LEXIS 3841, (3d Cir. Mar. 3, 2017), whose facts plaintiff had likened to the facts here. In



Noble, the court invalidated an arbitration clause because it was located within the contract "in a manner that gave no hint to a consumer that an arbitration provision was within." Id. at \*7. However, the facts here are dissimilar from Noble. The arbitration provision in Noble was found on page 97 of a 143-page contract. Id. at \*2-3. Here, the service contract instructs consumers to look within it for significant terms, is only eleven pages in length, and the words "ARBITRATION PROVISION" appear in capitalized, bold, and underlined letters.

Defendant argues the arbitration clause is clear and unambiguous because it encompasses the claims raised in plaintiff's complaint alleging violations of the CFA and TCCWNA. Defendant points to the contract provisions, which define arbitrable claims to include those "in contract, tort, or otherwise, including statutory, common law, fraud (misrepresentation or by omission), or other intentional tort, property, or equitable claims."

Although courts favor arbitration, "[o]nly those issues may be arbitrated which the parties have agreed shall be." Garfinkel, 168 N.J. at 132 (quoting In re Arbitration Between Grover & Universal Underwriters Ins. Co., 80 N.J. 221, 228 (1979)). Thus, a "court may not rewrite a contract to broaden the scope of arbitration[.]" Ibid. (alteration in original) (quoting Yale

Materials Handling Corp. v. White Storage & Retrieval Sys., Inc.,  
240 N.J. Super. 370, 374 (App. Div. 1990)).

Here, the arbitration provision broadly states disputes under statutory and common law claims are to be arbitrated. In addition, the contract employed broad language stating "[a]ny and all claims, disputes, or controversies of any nature whatsoever . . . arising out of" the service contract are subject to arbitration. Thus, the plaintiff's CFA and TCCWNA claims fell within the scope of the arbitration provision.

Finally, defendant notes plaintiff's contention he was not afforded an opportunity to review the entire service contract. Defendant asserts plaintiff's signature to the contract demonstrates he reviewed its terms and we should reject such an argument. The record demonstrates the motion judge did not rely on this argument to render a decision, plaintiff does not re-assert the argument on appeal, and we have affirmed for different reasons. Therefore, we decline to address the argument. R. 2:11-3(e)(1)(E).

Reversed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION